IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-02-2008

C O R A M

The Honourable Mr. JUSTICE P.K. MISRA
and
The Honourable Mr. JUSTICE K.K. SASIDHARAN

Writ Appeal Nos.1221 of 2005 and 82 of 2006
and Writ Petition No.36307 of 2004

W.A.No.1221 of 2005

N. Ramesh .. Appellant

Vs.

1. Sibi Madan Gabriel

2. The Secretary to Government,
Information and Tourism Department,
Govt. of Tamil Nadu,
Secretariat, Chennai-9.

3. The Director,
Information and Public Relations,
Secretariat, Chennai-9.

4. The Tamil Nadu Public Service
Commission, rep. by its Secretary,
Chennai-2. .. Respondents

W.A.No.82 of 2006

1. The Secretary,
Information and Tourism Department,
Govt. of Tamil Nadu,
Secretariat, Chennai-9.

2. The Director,
Information and Public Relations,
Secretariat, Chennai-9. .. Appellants

Vs.

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1. Sibi Madan Gabriel

2. The Tamil Nadu Public Service
   Commission, rep. by its Secretary,
   Chennai-2.

3. N. Ramesh .. Respondents

W.P.No.36307 of 2004

Sibi Madan Gabriel .. Petitioner

Vs

1. The Secretary to Government,
   Information and Tourism Department,
   Govt. of Tamil Nadu,
   Secretariat, Chennai-9.

2. The Director,
   Information and Public Relations,
   Secretariat, Chennai-9.

3. The Tamil Nadu Public Service
   Commission, rep. by its Secretary,
   Chennai-2.

4. N. Ramesh

5. The University Grants Commission,
   rep. by its Secretry,
   Bagadur Shah Zafar Marg,
   New Delhi 110 002.

6. The Registrar,
   Annamalai University,
   Chidambaram,
   Annamalai Nagar 608 002. .. Respondents

(R5 and R6 impleaded as per order dated
in WPMP.NO.1940/07 in W.P.36307/2004)

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Prayer : Writ Appeals filed under Clause 15 of the Letters Patent against the order of a learned single Judge of this Court dated 21.6.2005 made in W.V.M.P. No.2428 of 2004 in W.P.M.P. No.43649 of 2004 in W.P. No.36307 of 2004.

Writ Petition filed under Article 226 of the Constitution of India for a certiorarified mandamus calling for the records on the file of the 1st respondent in G.O.(D) No.392, Information and

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Tourism (AD1) Department dated 6.12.2004, quash the same and direct respondents 1 and 2 to consider the petitioner for promotion to the post of Principal, Film and Television Institutes of Tamil Nadu.

For Appellants : Mr. S.M. Subramaniam
in W.A.No.1221/05
R-3 in WA.No.82/06 &
R-4 in WP.No.36307/04

For Appellants
in W.A.No.82/2006 : Mr.L.S.M. Hasan Fizal
R-2&3 in WA.No.1221/05 & Govt. Advocate
R-1&2 in WP.No.36307/04

For Respondent-1 Mr. R. Thiagarajan,
in the W.As. and : Senior Counsel
Petitioner in W.P. for Mr.Muthappan

For Respondent-3
in WP.36307/04 : Mr.A. Arul (for TNPSC)

For Respondent-5 Mr. Muthukumarasamy
in W.P.No.36307/04 : Senior Counsel for
Mr.P.R. Gopinathan (UGC)

For Respondent-6 Mr. Jenasenan
in W.P.No.36307/04 : (for Annamalai University)

COMMON JUDGMENT

P.K. MISRA, J

The dispute relates to the question of appointment to the post of Principal in Film and Television Institute of Tamil Nadu, hereinafter referred to as "the Institute" in brief.

2. The two combatants in the on going legal battle are Mr. Sibi Madan Gabriel, petitioner in the Writ Petition No.36307 of 2004 and Mr.N. Ramesh, the Respondent No.4 in such writ petition. The post of the Principal in such Institute, which was lying vacant for a considerable length of time, was filled up by the appointment of fourth respondent as per order dated 6.12.2004. Such appointment is being challenged in the writ petition.

For convenience, the parties are described in the manner they have been arrayed in W.P.No.36307 of 2004.

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3. The factual background is as follows :-

The petitioner was appointed temporarily as Lecturer in Acting in the Institute by order dated 26.5.1982 and his service was regularised retrospectively with effect from the date of joining as per order dated 20.2.1992. The petitioner was subsequently promoted as Head of Section by G.O.Ms.No.236 dated 17.8.1993. During the year 2000, the fourth respondent was placed in additional charge to the post of the Principal. At that stage, the petitioner filed O.A.No.5275 of 2000 before the Tamil Nadu Administrative Tribunal (in short "Tribunal"). The Tribunal by its order dated 14.8.2000, directed the Government to consider the objections with reference to the qualification of the fourth respondent. At that stage, the Government appointed one Mr.K. Loganathan, which came to be challenged by the present fourth respondent by filing O.A.No.2085 of 2003 before the Tribunal, which was dismissed by the Tribunal by order dated 5.1.2004. Such order of the Tribunal was challenged by the fourth respondent by filing W.P.No.841 of 2004 which, though still pending, has become infructuous for all practical purposes, as after retirement of the said Mr.K. Loganathan, fourth respondent has been appointed as the Principal by impugned order dated 6.12.2004.

During pendency of the present W.P.No.36307 of 2004, the petitioner filed W.M.P.No.43649 of 2004 for stay, wherein an order of interim stay was granted. Thereafter, fourth respondent filed W.V.M.P.No.2428 of 2004 for vacating the stay which was rejected by the learned single Judge by order dated 21.6.2005. Writ Appeal No.1221 of 2005 was filed by the present fourth respondent and W.A.No.82 of 2006 was filed by the State Government and the Director of Information and Public Relations against such order refusing to vacate the order of stay. While hearing the aforesaid two writ appeals against such interim order relating to stay, the Division Bench also heard the main Writ Petition, namely, W.P.No.36307 of 2004 and while allowing the two writ appeals preferred against the order relating to stay, dismissed the writ petition vide judgment dated 14.2.2006. Such decision of the Division Bench was challenged by the petitioner in the Supreme Court by filing Civil Appeal No.3178 of 2007 (Arising out of SLP(C) No.7783 of 2006). The said Appeal was disposed by order dated 20.7.2007 by remanding the matter to the High Court for fresh disposal. The Supreme Court observed that the University Grants Commission as well as Annamalai University should be impleaded as parties. Thereafter, the University Grants Commission and Annamalai University have been impleaded as Respondent Nos.5 & 6 respectively as per order dated 1.10.2007.

4. The main contention raised by the petitioner is to the effect that the fourth respondent, who obtained his M.A. Degree from Annamalai University by simply appearing at such examination

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without any preceding formal degree is not eligible to be appointed as the Principal as such M.A. Degree cannot be considered as a valid degree.

5. It is not in dispute that Rules under Article 309 of the Constitution of India have been framed. The following qualifications are prescribed in Rule 4:-

Method of Recruitment	Qualification
Promotion	i) a degree in Science or Arts of any recognized University, ii) A diploma in any branch of Film Technology awarded by any recognized Institution in India, and iii) Service as Head of Section in any branch of Film Technology in the Government Institute of Film Technology, Madras for not less than five years.
Recruitment by Transfer or Direct Recruitment	i) A degree in Science or Arts of any recognized University, ii) A diploma in any branch of Film Technology awarded by any recognized Institute in India, and iii) Experience for a period of not less than ten years in Film Technology, of which at least five years shall be in teaching in a Film Institute.

5.1 There is no dispute that fourth respondent has a Diploma in the required branch of Film Technology and he has also served as head of Section for not less than five years. The only dispute is whether the fourth respondent, who has obtained M.A. Degree in Open University system by appearing at such examination held by Annamalai University, can be said to be possessing a degree as contemplated.

6. In the counter affidavit filed by the Respondent Nos.1 and 2, namely, the State Government and the Director of Information and Public Relations Department, it has been stated that as per G.O.Ms.No.216 Personnel and Administrative Reforms Department, dated 26.8.1997, orders have been issued recognising that the degree obtained in Open University is equal to the degree obtained in regular stream for the purpose of employment in Government Department.

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7. In the counter affidavit filed by the fourth respondent, reliance has also been placed on G.O.Ms.No.216 dated 26.8.1997 and it is claimed that Master's degree obtained from Open University system is valid and, therefore, the fourth respondent was eligible to be considered. Reference has been made in such counter to Letter No.F-1-188 T.13 dated 25.11.1988 issued by the Ministry of Human Resource Development (Department of Education). Similarly reference has been made to Letter dated 28.7.1993 written by the Additional Secretary of the Union Public Service Commission stating that Open Universities have been established by the Act of Parliament or State Legislature in accordance with the provisions contained in Section 2(f) of the University Grants Commission Act, 1956, hereinafter referred to as "the UGC Act" and such Universities are empowered to award degrees in terms of Section 22 (1) of the UGC Act, 1956.

7.1 While reflecting upon the stand of UGC before the Hon'ble Supreme Court of India, the fourth respondent has inter alia stated that UGC has the authority to grant exemption. It is further stated that from the correspondence made by UGC it is apparent that conferment of Master's degree on the basis of one sitting examination was valid prior to 1998. It is also indicated that in the State of Tamil Nadu, all the established Universities were conducting the "M.A., M.Com., M.Sc.," Open University System, and the Government of Tamil Nadu issued various orders recognising such degrees for the purpose of public appointments. It is also asserted that the Open University degrees are accepted for the purpose of appearing in Group-I examination by the Union Public Service Commission and for Civil Service examination.

8. The University Grants Commission, in short UGC, impleaded as fifth respondent pursuant to the directions of the Honourable Supreme Court, has stated in its counter affidavit that UGC in exercise of power conferred under Section 26 and more particularly 26(1)(f) of the UGC Act, 1956 has framed the UGC (the minimum standards of instructions for the grant of first degree through non-formal/distance education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985, hereinafter referred to as "UGC Regulations" in short. It is further stated that in view of the first proviso to Regulation 2 (2), unless and until a candidate successfully completes the "first degree course" of three years duration, he cannot be eligible for admission to the Master's course and such Master's degree cannot be termed as a valid degree for any purpose including employment. In the counter, reference has been made to various correspondence by extracting from such correspondence to indicate that at no point of time conferment of Master's degree by directly appearing at such examination without

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the benefit of a basic degree or the first degree has ever been countenanced by the UGC.

9. In the counter affidavit filed by the Annamalai University, impleaded as Respondent No.6, it has been stated that the University established a separate Directorate for the Distance Education Programme in 1979. Subsequently, the University started offering courses of study under the Open University System in 1991, which was in line with the Indira Gandhi National Open University (IGNOU), as per which "anyone who had completed the +2 or any one who has undergone the preparatory course and passed the written test is eligible to join the undergraduate programme of his/her choice." It is further stated that "Similarly those who have undergone the preparatory course and written test and are 21 years and above are eligible to appear for the P.G. courses."

It is further asserted that the University "have been furnishing information to the UGC regarding the instructions/courses offered by the University through the Non-Formal/Distance Education including the OUS every year." and that "the Central Government had responded to the University stating that the degrees/diplomas awarded by the Respondent University would stand automatically recognized for the purpose of employment under the Central Government."

It is further stated that at no point of time, the Central Government or the UGC had intimated the Annamalai University that M.A. Degree offered by Annamalai University through Open University System was contrary to the Regulations of the UGC and only in March, 2004, the Chairman, UGC emphasised the need to discontinue the Masters degree programme offered without requiring three year graduate degree qualification and thereafter such system has been discontinued with effect from July, 2004. On the basis of these averments, the main contention of the learned counsel for the Annamalai University is to the effect that there has been implied relaxation of the procedure hitherto followed by Annamalai University relating to grant of Master's degree.

10. The main contention of the petitioner is to the effect that since fourth respondent had not obtained any first degree i.e., graduate degree, he was not eligible to obtain a Master's degree in view of the provisions contained in UGC Regulations, 1985. The above stand of the petitioner is supported by the UGC.

The contesting fourth respondent, however, contends that in view of the various exemptions and correspondence, it must be taken that Master's degree obtained by fourth respondent through Open University System is valid.

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Annamalai University supports such stand to a great extent. It is contended on behalf of Annamalai University that whatever may be the position regarding the Regulations, it must be taken that the UGC had exempted Annamalai University and so long as such system of appearing directly in M.A. examination was in vogue, such degree must be considered to be valid as has been done by the State of Tamil Nadu. It has been contended by both the fourth respondent as well as sixth respondent that in fact many such persons who had obtained their Masters' degree by appearing in the Open University without appearing at the graduation degree have been found to be eligible for employment in Government service as well as in many public sector undertakings. The UGC having not raised any objection earlier and such practice, which was continuing till 2004, must be considered to be in accordance with the implied exemption granted by the UGC, is the specific contention of the Annamalai University.

11 From these averments and counter averments and the contentions of the counsels appearing for different parties, the moot questions which arise for determination are as follows :-

(1) Whether conferment of Master's degree by Annamalai University by allowing the persons to appear at M.A. examination even though such persons do not have the "basic degree" of graduation or the "first degree", is in accordance with the Regulations of the University Grants Commission ?

(2) Whether it can be said that there has been implied relaxation of such Master's degree by the University Grants Commission ?

(3) Whether a person holding such Master's degree by passing examination held by Annamalai University without the benefit of the basic degree or the first degree can be said to be eligible and qualified as per the requirement of the Rules applicable to the Institute for the post of Principal?

12. Before embarking upon the difficult journey of deciding the aforesaid aspects, we must make it clear that there is no dispute that the "Graduate Degree" is universally considered as the First Degree and the validity or otherwise of the first degree offered by the Open Universities including Annamalai University for conferring a degree of graduation is not in dispute. Similarly, there is also no dispute that after obtaining a first degree either through conventional system or the Open University System, a student can pursue Master's degree through Open University System. Though from correspondence there is some dispute relating to completion of "bridge course" of one year for those students who obtained graduation after two years course, such question is not at all relevant for the present purpose. The only dispute is relating

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to status of the Master's degree offered by Annamalai University through the system of M.A. examination in respect of candidates who do not have any preceding basic degree.

13. The University Grants Commission Act, 1956 (Act 3 of 1956), is an Act to make provision for co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission. The Apex Court in the decision reported in 2005(5) SCC 420 (Prof. Yashpal v. State of Chhattisgarh) considered the objects and reasons for enacting the University Grants Commission Act 1956 and the various functions of the commission in maintaining the standards in universities, the effect of a degree conferred by university and held thus:

> "38. A degree conferred by a university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the subject concerned by doing some original research work. A university degree confers a kind of status upon a person like a graduate or a postgraduate. Those who have done research work and have obtained a PhD, DLitt or DSc degree become entitled to write the word "Doctor" before their names and command certain amount of respect in society as educated and knowledgeable persons. That apart, the principal advantage of holding a university degree is in the matter of employment, where a minimum qualification like a graduate, postgraduate or a professional degree from a recognised institute is prescribed. Even for those who do not want to take up a job and want to remain in a private profession like a doctor or lawyer, registration with the Medical Council or the Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognised by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies.
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> 39. Mere conferment of degree is not enough. What is necessary is that the degree should be recognised. It is for this purpose that the right to confer degree has been given under Section 22 of the UGC Act only to a university established or incorporated by or under a

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Central Act, Provincial Act or State Act or an institution deemed to be a university under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this section provides that "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognised by the Government was pointed out by a Constitution Bench in S.Azeez Basha v. Union of India."

13.1 The University Grants Commission vested with the power to determine the standards for higher education is perfectly well within the powers to insist on a particular curriculum or a minimum qualification for approval of a degree and such being the case, it cannot be said that the Commission is only a body to disburse grant in aid to the universities. In fact, the Apex Court also considered Entry-66 pertaining to coordination and determination of standards in institution for higher education in Prof.Yashpal case and held thus:

"46.Entry 66 which deals with coordination and determination of standard in institutions for higher education or research and scientific and technical institutions is in the Union List and Parliament alone has the legislative competence to legislate on the said topic. The University Grants Commission Act has been made with reference to Entry 66 (see Prem Chand Jain v. R.K.Chhabra and Osmania University Teachers' Assn. v. State of A.P.). The Act has been enacted to ensure that there is coordination and determination of standards in universities, which are institutions of higher learning, by a body created by the Central Government. It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various universities in the country. In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. The course of study, its nature and volume, has to be ascertained and determined before the commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite calibre and a proper student-teacher ratio. For this purpose, the Central Government has made a number of rules in exercise of powers conferred by Section 25 of the UGC Act and the Commission has also made regulations

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in exercise of power conferred by Section 26 of the UGC Act and to mention a few, the UGC Inspection of Universities Rules, 1960, the UGC Regulations, 1985 Regarding the Minimum Standards of Instructions for the Grant of the First Degree, UGC Regulations, 1991 Regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, etc. UGC with the approval of the Central Government and exercising power under Section 22(3) of the UGC Act has issued a schedule of degrees which may be awarded by the universities. The impugned Act which enables a proposal on paper only to be notified as a university and thereby conferring the power upon such university under Section 22 of the UGC Act to confer degrees has the effect of completely stultifying the functioning of the University Grants Commission insofar as these universities are concerned. Such incorporation of a university makes it impossible for UGC to perform its duties and responsibilities of ensuring coordination and determination of standards. In the absence of any campus and other infrastructural facilities, UGC cannot take any measures whatsoever to ensure a proper syllabus, level of teaching, standard of examination and evaluation of academic achievement of the students or even to ensure that the students have undergone the course of study for the prescribed period before the degree is awarded to them.

47. The inter se evaluation of merit of candidates is often required to be done while making selection for some higher or specialised course of study or in the matter of employment. One of the important functions to be performed by UGC is coordination and determination of standards in institutions for higher education so that some kind of uniformity is maintained in level of teaching and examination and also award of degrees by various universities."

14. Section 26 of the UGC Act authorises the UGC to make Regulations. In exercise of the power conferred under Section 26 (1)(f), Regulations have been framed in 1985.

The relevant provisions of such Regulations as amended from time to time are extracted hereunder :-

"2. Admission / Students

(1) No student shall be eligible for admission to the 1st degree course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. In case there is no previous academic

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record, he shall be eligible for admission if he has passed an entrance test conducted by the University provided that he is not below the age of 18 years on July 1 of the year of admission.

(2) No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A./B.Sc./B.Com. (General Honours/Special) degree as the case may be.

Provided that no student shall be eligible to seek admission to the Master's Course in these faculties, who has not successfully pursued the first degree course of three years duration.

Provided further that, as a transitory measure where the universities are unable to change over to a three year degree course, they may award a B.A./B.Sc./B.Com (Pass) degree on successful completion of two year course, but that no student of this stream shall be eligible for admission to the Master's course unless he has undergone a further one year bridge course and passed the same. The three year degree course after 10+2 stage should in no case be termed a B.A./B.Sc./B.Com.(Pass) degree." (Emphasis added)

"6. Every University providing instruction through non-formal/distance education shall furnish to the University Grants Commission information relating to the observance of these Regulations in the form prescribed for the purpose. The information shall be supplied to the University Grants Commission within 60 days of the close of the academic year."

"8. The University Grants Commission shall have right to grant relaxation to a university in regard to the date of implementation or for admission to the first or second degree courses or to give exemption for a specified period in regard to other clauses in the regulation on the merit of each case."

14.1 In respect of student who had no previous academic record, as per Regulation-2, such person shall be eligible for admission to the first degree course through non-formal/distance education, if he has passed an entrance test conducted by the University. Regulation 2(2) contemplates that no student shall be made eligible for the award of the first degree unless he has successfully completed a three year course. The proviso contemplates that no student shall be eligible to seek admission to the Master's course who has not successfully pursued the first

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degree course of 3 years duration. The second proviso contemplates award of graduate degree on completion of 2 years course but, in such an event, such student shall be eligible to admission for Master's course only if he has undergone a further one year "bridge course" and passed the same. Thus, there is no doubt that UGC Regulations do not contemplate conferment of a Master's degree through Open University System unless a person has got the first degree either as a formal student or under non-formal/distance education system. It is thus apparent that conferment of Master's degree through non-formal system or Open University System is contemplated only when the student desirous of taking such a degree has already obtained the first degree, namely, the graduation degree.

14.2 The provisions contained in the Regulations make it clear that in order to be eligible for obtaining a Master Degree through the Open University System or otherwise, the student concerned must have successfully completed the first degree. Inevitably the first question is to be decided in the negative. The conferment of Master Degree on students who do not have the "first degree" is clearly contrary to the Regulations of the UGC.

15. Now to the second question. The UGC Regulations, 1985 have undergone modifications or amendments. As per Regulation-6, every University is required to furnish to the UGC information relating to the observance of the Regulations in the form prescribed for the purpose. As per the Regulations, incorporated by way of amendment, the UGC has the right to grant exemption or relaxation.

16. The specific assertion of the Annamalai University is to the effect that after introduction of conferment of M.A. degree through Open University System, it had been intimated to the UGC from the inception and from such communication it is apparent that students were allowed to appear at M.A. examination even though such students did not have any formal education nor were in possession of any graduation degree. It is contended by the counsel for fourth respondent as well as Annamalai University that since the Annamalai University had intimated about the introduction of such degree and no specific objection had ever been raised by the UGC and only during the year 2003-2004 there was a specific instruction by the UGC to discontinue such grant of Master's degree, it must be taken that there was implied relaxation relating to the provision regarding admission to M.A. Degree.

17 At this stage it would be appropriate to notice the relevant portion of various notifications /correspondence and letters referred to and relied upon by various parties. Relevant portion of letter No.F.1.30/96 (CPP-II) dated 23.7.1998, which is

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being used as the main plank by 4th and 6th respondents in support of their contention, is extracted hereunder :-

> "The Commission has considered the request and representations received from several candidates regarding the validity of M.A./M.Sc./M.Com. Degree (one sitting) and decided that no university may be allowed to enrol candidates for one sitting M.A./M.Sc./M.Com. from the academic year beginning in 1998 onwards and the students already registered may be allowed to complete their course by 30th June, 1999 and the degree awarded to these candidates up to that period may be treated as valid"

17.1 On the basis of such letter, it is contended that the students were permitted to obtain M.A. degree by appearing at such one sitting examination and only such practice was directed to be discontinued from the academic year 1998 onwards and the students already registered were permitted to complete their course till June, 1999. It is contended by the learned counsel appearing for fourth respondent that since the fourth respondent has got himself admitted before the cut-off date and had completed the course by appearing in the examination in May, 1999, the degree granted should be treated as valid.

17.2 However, as rightly pointed out by the learned counsel for the UGC, this instruction or relaxation was in respect of the students who were otherwise eligible i.e., students who had already obtained a graduation degree either through formal education or through Open University System and by no stretch of imagination it can be said that those who had not obtained any graduation degree were made eligible. Such letter cannot be read in isolation and in derogation of the specific provisions contained in the Regulations.

17.3 In the context in which such letter was issued it can only mean that the UGC was referring to the practice of having one sitting examination as distinct from the examinations at the end of every semester or every year. Such letter never purported to waive the basic provision contained in the Regulation 2 of the UGC Regulations that only a candidate having the first degree was eligible to pursue the M.A. degree through the Open University System.

18. From the above discussion of the relevant materials on record including the various correspondence, the inevitable conclusion is that the Master's degree offered by Annamalai University to the persons who had not obtained the basic degree or the first degree were in direct conflict with the specific Regulations of the UGC holding the field. The contention of the Annamalai University that there has been implied relaxation of the requirement of Regulation-2 (proviso) is not acceptable.

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19. Learned counsel for the Annamalai University has relied upon the decisions of the Supreme Court reported in AIR 1986 SC 638(NARENDER CHADHA AND OTHERS v. UNION OF INDIA AND OTHERS) and 1994 SUPP(3) SCC 516 (UNIVERSITY OF DELHI v. RAJ SINGH AND OTHERS) in support of his contention that there has been implied relaxation relating to applicability of Regulation 2(2) proviso and only on the basis of specific instructions of the UGC., the practice of admitting students directly for appearing at M.A. examination without the benefit of the previous graduation degree has been discontinued since 2004, but the degrees already granted till that date should not be nullified.

20. In AIR 1986 SC 638 (cited supra), while considering the question of seniority of the persons who were allowed to continue on ad hoc basis for a number of years, it was observed :-

> "14. . . . But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results. In the instant case the Government has also not expressed its unwillingness to continue them in the said posts."

21. Similarly in AIR 1985 SC 1019 (G.S. LAMBA v. UNION OF INDIA), the Supreme Court felt that "... It should be presumed that the excess appointment by promotion had been made in relaxation of the Rules since there was power to relax the Rules similar to the power under Rule 16."

22. In the decision of the Supreme Court in 1994 SUPP(3) SCC 516 (cited supra), relating to question of public employment, the ratio is that under certain facts and circumstances the Court can presume regarding relaxation of a particular provision, if for a continuos period appointments have been made or actions have been taken strictly not in accordance with the rules and regulations.

23. We do not think that the ratio of the aforesaid decisions of the Supreme Court recognizing the possibility of the implied relaxation in the cases relating to service matters can be made applicable to the present case. In all those cases before the Supreme Court, a competent authority had passed orders giving promotion to the persons concerned and the persons continued for a considerable length of time and under those circumstances the Supreme Court inferred that there was implied relaxation. In other words, the action permitting a particular person to be promoted

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emanated from a competent authority and continued as such for a long period. In the present case, there is nothing on record to indicate that at any time the UGC had either directly or even indirectly issued any letter or instruction permitting the candidates to appear in M.A. degree examination without the benefit of a first degree. On the other hand, the Regulations made it abundantly clear that no person was eligible to appear at the M.A. examination of the Open University, unless such person had obtained the first degree. Various correspondence only indicate that even the persons who had obtained the first degree not by completing three years degree course after +2 were required to undergo a bridge course for one year before becoming eligible for being registered as a candidate for M.A. examination of the Open University System. Even the correspondence relied upon by the counsel for Respondent No.4 or Respondent No.6 indicate that the entire correspondence was relating to either the completion of the bridge course or relating to the first degree and there is not even a single correspondence on the record to indicate that directly or even indirectly any competent authority of the UGC had ever approved the system of allowing persons to appear for M.A. degree examination, even though such persons had not obtained the first degree. Mere silence cannot be construed as implied exemption. The second question is also answered in the negative.

24. Now to the last part of the journey. Learned counsel for the petitioner has placed reliance upon G.O.Ms.No.476, Education Department, dated 19.11.1997 issued by the Government, whereunder the Government issued instructions that M.A. Degree obtained under the Open University System directly cannot be treated as equivalent to "a degree" for consideration as qualification for promotion to the category of Headmasters. As per the rules prescribed, the eligibility for the post of Headmaster of Middle Schools, it is contemplated that a person should have a degree of any University in the State or a degree of equivalent standard. The State Administrative Tribunal quashed the Government instructions. A Division Bench of this Court in W.P.NOs.1256 and 5657 of 1999 (K. SHANMUGASUNDARAM v. K. DHANASEKARAN & OTHERS), while considering the legality of such decision of the Tribunal, upheld the validity of the instructions by judgment dated 25.4.2002. Such instructions, which were issued in respect of post of a Headmaster, can also be said to be applicable for the post of Principal in the Institute.

25. Learned counsel appearing for Respondent No.4 has placed considerable reliance upon the letter No.F-1-188 T.13 dated 25.11.1988 issued by the Ministry of Human Resource Development (Department of Education) and G.O.Ms.No.216 Personnel and Administrative Reforms Department, dated 26.8.1997 recognising that the degree obtained in Open University is equal to the degree

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obtained in regular course.

25.1 The relevant portion of the letter dated 25.11.1988 is to the following effect :-

> "... the degrees / diplomas awarded by the Universities established by an Act of Parliament or State Legislature, Institution deemed to be Universities, under section 3 of the UGC Act 1956 and Institution of National Importance declared under an Act of Parliament stand automatically recognised for purpose of employment under the Central Government. No formal orders recognising such degrees / diplomas are necessary to be issued."

25.2 The relevant portion of the G.O.Ms.No.216 dated 26.8.1997 is extracted hereunder:-

> "The Government after careful examination have decided to accept the recommendation of the Committee and accordingly directs that Bachelor Degree, Post Graduate Degree and Diploma of Annamalai University (Open University) on par with Annamalai University (Regular Stream) Bachelor Degree Post Graduate Degree and Diploma for appointment to post in Public Services."

26. We do not think that the letter dated 25.11.1988 issued by the Ministry of Human Resource Development (Department of Education) should be interpreted to mean that a degree purportedly granted by some University in blatant contravention of the relevant Regulations of the UGC must be considered as a recognised degree for the purpose of employment under the Central Government. Such letter must be understood in the context in which it was issued. It can only mean that the degrees and diplomas awarded by the Universities in accordance with the relevant provisions of the UGC Act and the Regulations made therein would automatically be recognised.

26.1 Similarly, the direction issued by the Government under G.O.Ms.No.216 dated 26.8.1997 must be understood in the context in which such order was issued. It can only mean that the degrees obtained through the Open University System are considered equivalent to a traditional degree obtained through regular system, provided that such degrees are in conformity with the relevant statutory provisions including Rules and Regulations holding the field. It can never be countenanced that the Government consciously intended to recognize a degree of M.A., through Open University System without the benefit of the foundation degree or the basic degree as equivalent to a recognized degree, even though the UGC Regulations never contemplated such a course . Since the UGC Regulations were in place, it cannot be assumed that the Government in fact intended to depart from the Regulations issued by the UGC which have the status of a subordinate legislation under a Central statute relatable to laying down of the norms and

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standards as contained in Entry 66 of the Union List. Therefore, recognition of a degree from the Open University System could be only on the anvil that such degree must be in accordance with the Regulations of the UGC and not in direct conflict with such Regulations. The expression in the Rules that, for the purpose of eligibility of a person to be appointed as a Principal, he must be in possession of a degree of a recognised University cannot be stretched to include "Master's degree" obtained from Annamalai University by appearing at one time examination without the benefit of a previous "first degree".

Thus the inevitable conclusion is that the fourth respondent was not eligible to be considered for the post of Principal of the Institute as he did not possess a "degree" from a recognized University.

27. These conclusions should bring us to the end of the journey. The learned counsel for Respondent No.4 has, however, highlighted that the petitioner has filed several cases in different forums by adopting dubious methods and at times by suppressing relevant facts. In other words, Respondent No.4 wants to contend that the petitioner having not come with clean hands, the writ petition should be rejected.

Keeping in view the background of several litigations and the fact that the matter had gone upto the Supreme Court and has been remanded, we do not think it would be appropriate to consider the question of non-interference in the writ petition on the ground that the petitioner had not approached the Court with clean hands or had suppressed material facts. In this context, we are also constrained to observe that Respondent No.4 himself has been a very avid litigant relating to such promotion. In fact keeping in view the history of litigations launched by the parties concerned, one may be justified in assuming that the two principal combatants for the post of Principal, namely, the petitioner and Respondent No.4, must have spent considerable length of their time in the Courts or in the Chambers of the concerned Advocate rather than in the Institute.

28. For the aforesaid reasons, we are of the considered view that Respondent No.4 was not eligible to be considered for the post of Principal as the M.A. degree obtained by him through the Open University System without there being a first degree was not a valid degree. Since he was not eligible, obviously he could not have been selected for the post.

29. Even though the promotion of Respondent No.4 is thus found to be illegal, being contrary to the provisions of the UGC Regulations, the main relief claimed by the petitioner that the

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Government should be directed to promote the petitioner to the post of the Principal cannot be granted. As per the Rules applicable, the post of Principal can be filled up either by direct recruitment or by promotion among the eligible candidates. It is not obligatory on the part of the Government to fill up the post only by promotion and it is within the discretion of the Government to adopt any method of recruitment. The Government has to take a decision as to whether it would be appropriate and in the interest of the Institution to appoint a person as the Principal on the basis of direct recruitment or on the basis of promotion from among the eligible candidates. Thus, while holding that appointment of Respondent No.4 is illegal, we direct the Government to take steps to fill up the post of the Principal in accordance with law as expeditiously as possible, preferably within a period of six months from the date of receipt of this judgment.

30. So far as the writ appeals are concerned, they relate to interim orders. Since the writ petition itself is being disposed of and the order of appointment of Respondent No.4 is found to be illegal, action is to be taken in accordance with the direction given in the writ petition. As such, the question of continuing or discontinuing the stay order at this point of time does not arise. Both the writ appeals are disposed of.

31. In the result, both the writ appeals as well as the writ petition are disposed of with the aforesaid direction and observations. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

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To

1. The Secretary to Government,
   Information and Tourism Department,
   Govt. of Tamil Nadu,
   Secretariat, Chennai-9.

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2. The Director,
Information and Public Relations,
Secretariat, Chennai-9.

3. The Secretary
Tamil Nadu Public Service
Commission,
Chennai-2.

4. The Secretary
University Grants Commission,
Bagadur Shah Zafar Marg, New Delhi 110 002.

5. The Registrar
Annamalai University
Chidambaram,
Annamalai Nagar, 608 002.

1 cc to Mr.A. Arul, Advocate, SR. 5227
1 cc to Mr.A. Jenasenan, Advocate, Sr. 5384
1 cc to Mr.P.R. Gopinathan, Advocate, sr. 5342
1 cc to M/s. S.M. Subramaniam, Advocate, Sr. 5171
2 ccs to mr.M. Muthappan, Advocte, Sr. 5250

WA.NOs.
1221/05 & 82/06 and WP.36307/04

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